

REPRESENTATIVE FOR PETITIONER:
Arend J. Abel, Cohen & Malad, LLP

REPRESENTATIVE FOR RESPONDENT:
George Spenos, Franklin Township Chief Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

SHIRK'S INTERNATIONAL,)	Petition No.: 49-300-03-3-7-00040
)	Parcel: Personal Property
Petitioner,)	
)	
v.)	
)	Marion County
FRANKLIN TOWNSHIP)	Franklin Township
ASSESSOR,)	Assessment Year: 2003
)	
Respondent.)	

Appeal from the Final Determination of the
Marion County Property Tax Assessment Board of Appeals

April 5, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:
Is the semi-tractor trailer (business personal property) assessable in Franklin Township?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. Petitioner filed a Business Tangible Personal Property Assessment Return (Form 103) for 2003 in Decatur County, the location of its business. Petitioner did not file a Form 103 in Franklin Township, Marion County. The Franklin Township Assessor prepared a Form 103 in Petitioner's name, assessing a semi-tractor trailer owned by Petitioner and located in Franklin Township on March 1, 2003. Arend J. Abel, Cohen & Malad, LLP, on behalf of Shirk's International, filed a Petition for Correction of an Error (Form 133) to the Marion County Property Tax Assessment Board of Appeals (PTABOA) on October 18, 2004. The PTABOA issued a decision upholding the 2003 assessment on December 17, 2004.
2. Pursuant to Ind. Code § 6-1.1-15-12, Petitioner sought the Board's review. Petitioner filed a Form 133 for the 2003 assessment on January 19, 2005. This petition initially was denied as defective on August 3, 2005. On August 18, 2005, Petitioner requested a rehearing. The Board granted rehearing on August 23, 2005.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on January 10, 2006. Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3, conducted the hearing.
4. The following persons were present at the hearing and sworn as witnesses:
 - For Petitioner – Arend J. Abel, Cohen & Malad, LLP,
 - For the Respondent – George Spenos, Chief Deputy Assessor.

5. The following exhibits were presented by Petitioner:
 - Petitioner Exhibit 1 – Affidavit of Charles Shirk, President of Shirk’s International,
 - Petitioner Exhibit 2 – Petitioner’s Brief with attachments.

6. The following exhibits were presented by Respondent:
 - Respondent Exhibit 1 – Copy of 50 IAC 4.2-2-1,
 - Respondent Exhibit 2 – Copy of Ind. Code § 6-1.1-3-1,
 - Respondent Exhibit 3a – Business Tangible Personal Property Return (Form 104) prepared by Respondent,
 - Respondent Exhibit 3b – Notice of Assessment (Form 113) issued by Respondent,
 - Respondent Exhibit 3c – Form 103 prepared by Respondent.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 133,
 - Board Exhibit B – Notice of Hearing on Petition - Board Rehearing and Notice of Intent to Rehear Petition,
 - Board Exhibit C – Request for rehearing with attachments (Forms 103 and 104 filed in Decatur County and Form 113 from Respondent).

8. The Administrative Law Judge did not inspect the property.

9. The subject tangible personal property (a semi-tractor trailer) was located in Franklin Township on March 1, 2003.

10. The disputed assessment is \$22,750.

11. Petitioner contended the property is not assessable in Franklin Township.

State Review and Petitioner's Burden

12. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process. The Board is authorized to issue a final determination pursuant to Indiana Code § 6-1.5-5-5.
13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Analysis

16. Indiana’s personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within Indiana on March 1 of any year is required to file a personal property tax return on or before May 15 of that year unless an extension of time to file is obtained. 50 IAC 4.2-2-2.

17. Generally, personal property owned by an Indiana resident must be assessed at the place where the owner resides. Ind. Code § 6-1.1-3-1(a); 50 IAC 4.2-2-1(b). Nevertheless, personal property is assessed where it is situated on the assessment date if it has a different tax situs and if it is regularly used or permanently located at that location. Ind. Code § 6-1.1-3-1(c); 50 IAC 4.2-2-1(b).
18. Petitioner's business includes buying and selling trailers. The business is located in Decatur County, Indiana. Sometime before March 1, 2003, Petitioner purchased the semi-tractor trailer at an auction in Franklin Township. The trailer was not removed from the auction premises until after March 1, 2003, at which time it was transported to Petitioner's Decatur County business location. The trailer was included as inventory and reported on the personal property tax return filed in Decatur County. The trailer was temporarily located on the premises of the auction company, but it was not permanently located or regularly used there at any time after Petitioner bought it. *Pet'r Ex. 1*.
19. Petitioner made a prima facie case the personal property is not assessable in Franklin Township for 2003. The burden shifted to Respondent to rebut or impeach Petitioner's evidence.
20. Respondent presented a copy of the Form 103 prepared by Respondent to assess the trailer. *Resp't Ex. 3c*. Respondent merely asserted the Board would need to decide whether the trailer was reported in Decatur County. *Spenos testimony*. Such statements, especially when they are unaccompanied by substantial evidence or argument as they are in this case, demonstrate a failure to understand or acknowledge the Board's proper role. *See Meridian Towers*, 805 N.E.2d at 480 (stating that the Board must conduct an impartial review and does not have authority to make a case for an assessor).
21. Respondent did not dispute any of the evidence presented by Petitioner or present any probative evidence the trailer was regularly used or permanently located in Franklin Township. Respondent failed to rebut Petitioner's prima facie case.

Summary of Final Determination

22. Petitioner made a prima facie case the trailer is not assessable in Franklin Township for 2003. Respondent failed to rebut Petitioner's prima facie case. The Board finds in favor of Petitioner. Petitioner was not required to report the trailer to Respondent and Respondent should not have assessed it. This erroneous assessment must be removed.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.